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SUBJECT: CROATIAN MARKET COMPETITION AGENCY ASSERTS ITSELF

¶1. (SBU) Croatia has recently made significant progress toward a new competition law that will be more in line with EU legislation, strengthening potential penalties for monopolistic practices, and empowering the Agency for the Protection of Market Competition (AZTN) to enforce its directives. The law will give the Agency new powers to investigate collusion and other illegal market practices and to impose significant administrative fines. Olgica Spevec, the director of the agency, told Econoffs the reforms are greatly needed, as previously the AZTN could only investigate and refer cases to judicial authorities for appropriate action. Such cases were then heard in the court of first instance, the equivalent of a misdemeanor court. This echoes complaints from the American Chamber of Commerce in Croatia that significant cases of collusive or monopolistic practices are being heard "alongside traffic court cases." The new law would give Spevec the ability to unilaterally impose fines of up to 10 percent of a company's revenue, with a single higher level court having the right to hear appeals.

¶2. (SBU) By far the biggest and most politically sensitive case the AZTN has reviewed recently has been the acquisition of the national oil company INA by Hungarian MOL. Both INA and MOL operate gas stations throughout Croatia and the merger would have given MOL a dominant position in this market, by some estimates approaching 65 percent (although the impact on the public is questionable since fuel prices are fixed and adjusted on a regular schedule). The AZTN ordered MOL to sell its Crobenz subsidiary and not to build any new fueling stations within 30km of existing stations. (Note: Crobenz's market share is reportedly only 5 percent, and MOL's market share will still exceed 50 percent. MOL may find the directive on expansion more restrictive than the sale of Crobenz. Nevertheless, there are unconfirmed reports that the Prime Minister is unhappy with the AZTN's meddling in the INA-MOL deal and would like to find a way to replace the director.)

¶3. (SBU) Member companies of the American Chamber of Commerce in Zagreb have long complained about unfair market practices that strongly favor domestic companies against international competition. For example, the huge agriculture/food processing conglomerate Agrokor owns iNovine, one of the largest chains of press stands in Croatia. Through restrictive, and some would say illegal, contracts with its subsidiaries, Agrokor forbids iNovine from carrying competing products in the stands. Such aggressive practices help Agrokor keep a dominant position in the market for everything from ice cream to cigarettes, exceeding 90 percent market share for certain products. While AmCham members do not say the new law will eliminate such practices, they strongly support increasing the independence of the AZTN to levy punitive fines. AZTN Director Spevec told us that the new structure will be almost unprecedented in the Croatian system, where enforcement powers, including the imposition of administrative fines, lie almost exclusively

within the notoriously overburdened court system. Unfortunately, due to the new burden of an investigative role given to the Agency, Spevec said the law will not go into practical effect until late 2010.

COMMENT

14. (SBU) With the new directives for INA/MOL, AZTN Director Spevec has again shown herself willing to take unpopular positions in favor of a stronger market economy (she previously has advised the government on the unsustainability of Croatian shipyards). The structure of the new competition law will help her and could set an important precedent in devolving government regulation out of the exclusive realm of inspectorates and courts and into the hands of expert regulators. But as with many things in Croatia, the issue is not clear cut. Spevec's husband is a senior manager at Agrokor, the target of many of the complaints of monopolistic behavior. But her willingness to impose restrictions on politically sensitive companies such as INA is a positive sign that the AZTN takes its role of strengthening Croatia's competitive environment seriously.

BRADTKE